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14 **UNITED STATES DISTRICT COURT**

15 **DISTRICT OF NEVADA**

16 TERRANCE WALKER, an individual,

17 Plaintiff,

18 vs.

19 INTELLI-HEART SERVICES, INC.; DANNY WEISBERG; VANESSA PARSON; and DANIEL GERMAIN.

20 Defendants.

21 CASE NO: 3:18-cv-00132-MMD-CLB

22 **DEFENDANT INTELLI-HEART SERVICES, INC.,
23 VANESSA PARSONS AND DANNY WEISBERG'S
24 OPPOSITION TO PLAINTIFF'S SECOND
25 MOTION FOR RECONSIDERATION**

26 **[ECF 209]**

27 COMES NOW Defendants Intelli-Heart Services, Inc. ("IHS"), Vanessa Parsons, and Danny Weisberg, by and through their counsel William J. Geddes, Esq., and Kristen R. Geddes, Esq., of The Geddes Law Firm, P.C., and herein files *Defendants' Opposition to Plaintiff's Motion for Reconsideration Under Rule 60 Due to Lack of Discovery Before the Issuance of Anti-Slapp Ruling on Evidence and Unconstitutionality* [ECF 209]. This opposition is based upon the following Points and Authorities, the pleadings and papers on file in this action, and any oral arguments the Court may entertain at any hearing set for this matter.

28 **MEMORANDUM OF POINTS AND AUTHORITIES**

29 **A. ARGUMENT**

30 **1. The Court Should Strike Plaintiff's Second, Successive Motion for Reconsideration.**

31 Local Rule 59-1(b) provides that "[m]otions for reconsideration are disfavored. A movant

1 must not repeat arguments already presented unless (and only to the extent) necessary to
 2 explain controlling, intervening law or to argue new facts. A movant who repeats arguments will
 3 be subject to appropriate sanctions.

4 Plaintiff filed not one, but two, successive motions for reconsideration or relief from
 5 judgment, both of which just repeat arguments already made and which were rejected by the
 6 Court. The Court should decline to permit Plaintiff's continued motions for reconsideration, and
 7 should strike Plaintiff's additional reconsideration motion as violative of LR 59-1(b).

8 **2. The Is No Basis for the Court to Grant Relief Pursuant to Fed. R. Civ. P. 60(b).**

9 A District court has wide discretion in deciding whether or not to grant motion under Fed.
 10 R. Civ. P. 60(b), and its decision will only be reversed for clear abuse of discretion. *Atkinson v.*
 11 *Prudential Property Co.*, 43 F.3d 367 (8th Cir. 1994).

12 A court, however, does not abuse its discretion in denying
 13 a motion for reconsideration merely because the
 14 underlying motion could have been erroneous; rather, the
 15 underlying order must be clearly erroneous. Clear error
 16 occurs when the reviewing court on the entire record is left
 17 with the definite and firm conviction that a mistake has
 18 been committed. As the Sixth Circuit has put it, a decision
 19 should not be disturbed under the clear error standard
 20 unless it strikes the court as wrong with the force of a five-
 21 week old, unrefrigerated dead fish.

22 *Siegle v. Sorrento Therapeutics, Inc.*, No. 3:18-cv-01681-GPC-MSB, 2019 U.S. Dist. LEXIS 216776,
 23 at *14 (S.D. Cal. Dec. 17, 2019) (internal citations omitted). To the extent the Court entertains
 24 Plaintiff's additional, successive Motion for Reconsideration (see ECF 208 and 209), the Motion
 25 lacks merit and must be denied.

26 a. Where Defendants Asserted Evidentiary Based Arguments in Their Anti-
SLAPP Motion, Plaintiff Was Afforded Sufficient Discovery Prior to the
Ruling on the Motion. Conversely, Where Defendants Attacked the
Sufficiency of the Second Amended Complaint, No Discovery Was Necessary
for Plaintiff to Oppose the Motion.

27 In *Planned Parenthood*, the Ninth Circuit adopted the rationale of a prior, non-binding
 28 opinion that held that “[i]f a defendant makes an anti-SLAPP motion to strike founded on purely
 legal arguments, then the analysis is made under Fed. R. Civ. P. 8 and 12 standards; if it is a factual
 challenge, then the motion must be treated as though it were a motion for summary judgment

1 and discovery must be permitted." *Planned Parenthood*, 890 F.3d 833, *amended*, 897 F.3d 1224
 2 (9th Cir. 2018), *and cert. denied sub nom. Ctr. for Med. Progress v. Planned Parenthood Fed'n of Am.*,
 3 139 S. Ct. 1446, 203 L. Ed. 2d 681 (2019) (citing *Z.F. v. Ripon Unified School Dist.*, 482 F. App'x 239,
 4 240 (9th Cir. 2012)).

5 Plaintiff relies heavily on *Planned Parenthood*, yet he misapplies the Ninth Circuit's
 6 analysis to claim that the Court erred by denying additional discovery prior to ruling on
 7 Defendants' anti-SLAPP motion.

8 Plaintiff initially filed a First Amended Complaint naming IHS alleging tortious
 9 interference with a contractual relationship. *See* ECF 004. Plaintiff conducted considerable
 10 discovery on the First Amended Complaint, including his propounding 66 Requests for
 11 Production of Documents, 122 Requests for Admissions and 24 Interrogatories to IHS. Where
 12 Defendants raised evidentiary-based arguments in their anti-SLAPP motion, it is clear that
 13 Plaintiff had sufficient opportunity to obtain evidence he could have submitted tending to
 14 demonstrate a probability of success on the merits of a tortious interference claim – yet he failed
 15 to submit any evidence in opposition to Defendants' Motion.

16 Conversely, Defendants' Motion was clear that with respect to the new claims added by
 17 way of the Second Amended Complaint, Defendants' anti-SLAPP Motion attacked the sufficiency
 18 of the Second Amended Complaint by Defendants' references to Rule 12(b)(6) and the legal
 19 standard thereunder. *See* ECF 169 at 1, 14-24. Defendants did not assert fact-based challenges
 20 to the newly added claims, and consequently, the Court's denial of discovery was proper because
 21 the arguments were purely legal and did not require that Plaintiff have discovery in order to
 22 oppose Defendants' Motion. *See Planned Parenthood*, 890 F.3d at 834 ("[i]f a defendant makes a
 23 special motion to strike based on alleged deficiencies in the plaintiff's complaint, the motion must
 24 be treated in the same manner as a motion under Rule 12(b)(6) except that the attorney's fee
 25 provision of [anti-slapp] applies." (Citing *Rogers v. Home Shopping Network, Inc.*, 57 F. Supp.2d
 26 973, 983 (C.D. Cal. 1999)); *and see also, Smith v. Craig*, No. 2:19-cv-00824-GMN-EJY, 2020 U.S.
 27 Dist. LEXIS 38774, at *7 (D. Nev. Mar. 4, 2020) (In analyzing the merits of defendant's anti-SLAPP
 28 Motion, the Court turns to the complaint's allegations since defendant challenges solely the "legal

1 sufficiency" of plaintiff's claims; and discovery was not necessary to address defendant's motions
 2 to dismiss because the motions relied solely on plaintiff's pleadings).¹

3 Plaintiff argues that because he was not permitted additional discovery to oppose
 4 Defendants' motion, this amounted to an unconstitutional application of the anti-SLAPP statute.
 5 A proper reading and application of *Planned Parenthood*, however, does not support Plaintiff's
 6 argument and it is clear that the Court did not err by denying additional discovery prior to ruling
 7 on the motion.

8 **B. Conclusion**

9 The instant Motion lacks merit because discovery was not required for Plaintiff to oppose
 10 a motion to dismiss attacking the legal sufficiency of the Second Amended Complaint. Thus, the
 11 Court did not err in denying additional discovery prior to ruling on the anti-SLAPP motion and
 12 there is no basis for reconsideration or relief from the judgment in Defendants' favor.

13 DATED this 27th day of March, 2020.

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 27
 28 ¹ What's more, although the Court properly denied Plaintiff additional discovery in order to
 29 oppose purely legal arguments, with respect to Plaintiff's Count V (tortious interference) against
 30 Defendant Weisberg, Plaintiff independently moved for partial summary judgment on that claim
 31 the same day Defendants filed their Motion to Dismiss. *See* ECF 171. That Plaintiff moved for
 32 partial summary judgment demonstrates his apparent belief that he had *already* conducted
 33 sufficient discovery to support a summary judgment motion for that claim. His filing a summary
 34 judgment motion completely undercuts any argument that he required discovery in order to
 35 oppose the anti-SLAPP Motion.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Geddes Law Firm, P.C., and that on March 27th, 2020, I caused to be served a copy of the foregoing *Defendants' Opposition to Plaintiff's Motion for Reconsideration Under Rule 60 Due to Lack of Discovery Before the Issuance of Anti-Slapp Ruling on Evidence and Unconstitutionality [ECF 209]*. by filing with the Court's electronic filing system (PACER), addressed to the following:

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